



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2019-0824]

RIN 1625-AA09

Drawbridge Operation Regulation; Milwaukee, Menomonee, and Kinnickinnic Rivers and Burnham Canals, Milwaukee, WI.

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating schedules of the bridges over the Milwaukee, Menomonee, and Kinnickinnic Rivers and South Menomonee and Burnham Canals. The City of Milwaukee requested the regulations to be reviewed and updated to allow for a more balanced flow of maritime and land based transportation.

DATES: Comments and relate material must reach the Coast Guard on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2019-0824 using Federal e-Rulemaking Portal at <https://www.regulations.gov>.

See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Lee D. Soule, Bridge Management Specialist, Ninth

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations */Delete/add any abbreviations not used/used in this document/*

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
IGLD85	International Great Lakes Datum of 1985
LWD	Low Water Datum based on IGLD85
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code

II. Background, Purpose and Legal Basis

The Milwaukee River is approximately 104 miles long. Beginning in Fond du Lac County the river flows easterly to a low head dam just above the Humboldt Avenue Bridge at mile 3.22 in downtown Milwaukee, WI. From here the river flows south to Lake Michigan. This southerly course of the Milwaukee River divides the lakefront area from the rest of the city. The Menomonee River joins the Milwaukee River at Mile 1.01 with the Kinnickinnic River joining the Milwaukee River at Mile 0.39. 21 bridges cross the Milwaukee River from mile 0.19 to mile 3.22. In the early 20th Century, the Milwaukee River was heavily used to support the industries in and around the Great Lakes. Today, the river has been redeveloped as a tourist and recreational destination. From its confluence with the Milwaukee River the Menomonee River flows west for 33 miles. The lower three miles of the Menomonee River is passable by vessels over 600 feet in length. Seven bridges cross the navigable portion of the Menomonee River.

The South Menomonee Canal and the Burnham Canal were both excavated during a waterways improvement project in 1864. Both man-made canals are tributaries of the Menomonee River branching just above its mouth. The South Menomonee Canal is crossed by two bridges and the Burnham Canal is crossed by three bridges.

The Kinnickinnic River flows north through the southern portion of the City of

Milwaukee connecting with the Milwaukee River near Lake Michigan. Only the lower 2.30 miles of the river have been improved for vessel use. Five bridges cross the river with the Lincoln Avenue Bridge at the head of navigation. Freighters up to 1,000 feet in length transfer cargoes at the confluence of the Kinnickinnic and Milwaukee Rivers. Most of the recreational vessels in Milwaukee moor in the lake front marinas and only transit the rivers. Boat yards on the Menomonee and Kinnickinnic rivers haul out and store most of the recreational vessels in the fall and winter months and launch the vessels in the spring. This action contributes to a considerable surge in drawbridge openings in the fall and spring.

The following bridges will be included in the proposed rule: The Union Pacific Railroad Bridge, mile 0.59, over the Milwaukee River with a vertical clearance in the closed position of 7 feet above International Great Lakes Datum of 1985 (IGLD85). The Broadway Street Bridge, mile 0.79, over the Milwaukee River with a vertical clearance in the closed position of 14 feet above IGLD85. The Water Street Bridge, mile 0.94, over the Milwaukee River with a vertical clearance in the closed position of 14 feet above IGLD85. The St. Paul Avenue Bridge, mile 1.21, over the Milwaukee River with a vertical clearance in the closed position of 14 feet above IGLD85. The Clybourn Street Bridge, mile 1.28, over the Milwaukee River with a vertical clearance in the closed position of 14 feet above IGLD85. Michigan Street Bridge, mile 1.37, over the Milwaukee River with a vertical clearance in the closed position of 12 feet above IGLD85. The Wisconsin Avenue Bridge, mile 1.46, over the Milwaukee River with a vertical clearance in the closed position of 12 feet above IGLD85. The Wells Street Bridge, mile 1.61, over the Milwaukee River with a vertical clearance in the closed position of 12 feet above IGLD85. The Kilbourn Avenue Bridge, mile 1.70, over the Milwaukee River with a vertical clearance in the closed position of 14 feet above IGLD85. The State Street Bridge, mile 1.79, over the Milwaukee River with a vertical

clearance in the closed position of 14 feet above IGLD85. The Highland Avenue Pedestrian Bridge, mile 1.97, over the Milwaukee River with a vertical clearance in the closed position of 12 feet above IGLD85. The Juneau Avenue Bridge, mile 2.06, over the Milwaukee River with a vertical clearance in the closed position of 14 feet above IGLD85. The Knapp Street/Park Freeway Bridge, mile 2.14, over the Milwaukee River with a vertical clearance in the closed position of 16 feet above IGLD85. The Cherry Street Bridge, mile 2.29, over the Milwaukee River with a vertical clearance in the closed position of 14 feet above IGLD85. The Pleasant Street Bridge, mile 2.58, over the Milwaukee River with a vertical clearance in the closed position of 14 feet above IGLD85. The Canadian Pacific Railroad Bridge, mile 1.05, over the Menomonee River with a vertical clearance in the closed position of 8 feet above IGLD85. The North Plankinton Avenue Bridge, mile 1.08, over the Menomonee River with a vertical clearance in the closed position of 14 feet above IGLD85. The North Sixth Street Bridge, mile 1.37, over the Menomonee River with a vertical clearance in the closed position of 23 feet above IGLD85. The Ember Lane Bridge, mile 1.95, over the Menomonee River with a vertical clearance in the closed position of 12 feet above IGLD85. The Sixteenth Street Bridge, mile 2.14, over the Menomonee River with a vertical clearance in the closed position of 35 feet above IGLD85. The South Sixth Street Bridge, mile 1.51, over the South Menomonee Canal with a vertical clearance in the closed position of 8 feet above IGLD85. The Union Pacific Railroad Bridge, mile 1.19, over the Kinnickinnic River with a vertical clearance in the closed position of 8 feet above IGLD85. The Kinnickinnic Avenue Bridge, mile 1.67, over the Kinnickinnic River with a vertical clearance in the closed position of 8 feet above IGLD85. The Canadian Pacific Railroad Bridge, mile 1.67, over the Kinnickinnic River with a vertical clearance in the closed position of 15 feet above IGLD85. Finally, the South First Street Bridge, mile 1.78, over the Kinnickinnic River with a vertical clearance in the closed position of 14 feet above

IGLD85. These bridges currently operate under Title 33 of the Code of Federal Regulations (33 CFR 117.1093).

In response to downtown Milwaukee residents' concerns regarding a pronounced increase in vehicular traffic in the area, the City of Milwaukee has requested a complete review of the bridge regulations in this area. Over the years, these regulations have been amended considerably. This has had the effect of making them difficult to comprehend to the average person. Additionally, the cyclic higher water levels over the past 3 years and increased number of passenger vessels in the downtown area have resulted in significantly more bridge openings. Finally, the conversion of older business building into condominiums have increased the evening vehicle traffic causing major traffic delays when the bridges are lifted. While the Milwaukee River is the primary concern with residents and mariners, this rulemaking proposes changes to the language governing bridges in the entire Milwaukee Harbor area, for the purpose of updating these regulations to accurately reflect the current operational needs of these bridges and make them easier to understand by the general public.

Currently, the Canadian Pacific Railroad Bridge at Mile 1.74 over the Burnham Canal and the Sixth Street Bridge at Mile 1.37 over the Menomonee River are closed by regulation and do not need to open for the passage of vessels. The City of Milwaukee has requested that the Sixteenth Street Bridge, mile 2.14, over the Menomonee River remain closed and not open by regulation. No vessels have requested a bridge opening in at least 10 years and the bridge provides a horizontal clearance of 120 feet and a vertical clearance of 35 feet above IGLD85, allowing most vessels to pass under the bridge without an opening. The Coast Guard is working with the City of Milwaukee to convert the Sixteenth Street Bridge to a fixed structure.

Ice has historically hindered or prevented navigation during the winter months. For the last eight years the Coast Guard has authorized the drawbridges to open on signal

with a 12-hour advance notice of arrival for vessels from November 19th to April 16th.

After careful review of the drawtender logs provided by the City of Milwaukee, the Coast Guard proposes to allow all bridges to require a 12-hour advance notice for openings from November 1st to April 15th each year.

The City of Milwaukee requested that from 11 p.m. to 7 a.m. daily, the bridges would open on signal with a 2-hour advance notice. During these hours the bridges would not be manned and roving drawtenders would open the bridges for vessels. After reviewing the 2016, 2017, and 2018 drawtender logs it was found that for those hours between April and November of each year an average of 45 vessels requested openings. Of these requests an average of 32 openings were between the hours of 11 p.m. and midnight. From midnight to 7 a.m. there were only 13 vessels that requested openings. After reviewing the data we have concluded that due to a lack of openings from midnight to 7 a.m. that a two-hour advance notice of arrival for a bridge opening meets the reasonable needs of navigation.

The City of Milwaukee also reported receiving several complaints from residents in the downtown area concerning the noise associated with the waterfront. To improve the quality of downtown living we propose to remove the special sound signals listed in the CFR for each bridge. Mariners would request openings by using the standard sound signal of one prolonged blast followed by one short blast or by agreement on VHF-FM Marine Radio or by telephone. From Midnight to 7 a.m. the bridges would require a 2-hour advance notice of arrival provided by VHF-FM Marine Radio or by telephone thus reducing some of the noise associated with the waterfront.

The City of Milwaukee requests to operate the following bridges remotely: North Plankinton Avenue, mile 1.08, North Sixth Street, mile 1.37, and North Ember Lane, mile 1.95, all over the Menomonee River. Each remotely operated bridge will have sufficient equipment to operate as if a drawtender is in attendance at the bridge. No drawtender will

be responsible for monitoring or operating more than 3 drawbridges at any time. At a minimum each remotely operated drawbridge will have the capabilities to communicate by 2-way public address system, equipment capable of making appropriate sound signals as required, and have adequate camera systems in place to safely operate the bridge.

The current regulation allows for no openings from 7:30 a.m. to 8:30 a.m. and from 4:30 p.m. to 5:30 p.m. for vehicular rush hours. The city has requested to start the evening rush hour at 4 p.m. instead of 4:30 p.m. to help relieve vehicle congestion.

III. Discussion of Proposed Rule

On April 8, 2020 we published a Temporary Deviation, request for comments in FR 2020-06822 and we did not receive any comments. We published a Temporary Final Rule on March 9, 2020 in FR 2020-04659 requesting comments before November 2, 2020. This Temporary Final Rule allowed the city to test the new schedule and allow residents to comment all summer.

Several comments were directed at the operation of the Canadian Pacific Railroad Bridge, mile 1.05, over the Menomonee River. Most of the comments were complaints filed on Coast Guard Delay reports that claims the Canadian Pacific Railroad Bridge, mile 1.05, over the Menomonee River, did, on August 6, 2020 on or about noon that day fail to respond to signals for opening and fail to open the bridge within the 2-hour requirement. The tender stated the request for advance notice for bridge opening was not passed on by the previous drawtender and that priority was given to working on a train and not tending to the bridge. This resulted in three large vessels stuck between bridges waiting for the railroad bridge to open for two hours and forty-five minutes past the arrival time provided by the vessels. We received a separate report that the bridge was out of service for four days, no report was given to the U.S. Coast Guard Command Center and at least one vessel was delayed for four days. We received another report that the bridge was unable to open on October 6, 2020

because the bridge supervisor directed the drawtender to a different location for the day and no other operators were available until the following day. We received a separate report on the same day of October 6, 2020 from a second vessel that was told railroad had been attempting to call in another drawtender from 4:30 a.m. to 8:19 a.m. without success and the bridge would not open for maritime traffic. On or about June 13, 2020 three sailing vessels were observed waiting at the Canadian Pacific Railroad Bridge at 3:23 p.m. and were not provided an opening until after 5:30 p.m.

The second report was a comment submitted to the Regulations.Gov portal that requested the schedules to return to the original schedules citing vessels were using excessive speed to go through the river to make the new schedule. The speed limits in the harbor needs to be addressed by the agency responsible for posting the speed limits in the harbor and the author did not consider the needs of all modes of transportation involved with the decision.

On March 30, 2021 we received a report from a public vessel that, the drawtender did inform the vessel that requested an opening that a new law required the bridge to remain closed if ice was present.

Our office did engage with residents verbally over the phone on several occasions to answer questions and encouraged them to leave comments on the regulations.gov website.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits

of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. . This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the ability that vessels can still transit the bridge given advanced notice.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT

section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such

an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f). The Coast Guard determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to

which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; DHS Delegation No. 0170.1.

2. Revise § 117.1093 to read as follows:

§ 117.1093 Milwaukee, Menomonee, and Kinnickinnic Rivers and South Menomonee and Burnham Canals.

- (a) The draws of the bridges over the Milwaukee River shall operate as follows:

(1) The draws of the North Broadway Street bridge, mile 0.5, and North Water Street bridge, mile 0.6, and Michigan Street bridge, mile 1.1, shall open on signal; except that, from April 16th through November 1st, from 7:30 a.m. to 8:30 a.m. and from 4 p.m. to 5:30 p.m. Monday through Friday, except Federal holidays, the draws need not be opened, and from midnight to 7 a.m. Monday through Saturday except Federal holidays the bridges will open on signal if a 2-hour advance notice is provided.

(2) The draws of all other bridges across the Milwaukee River shall open on signal if at least 2-hours' notice is given except that, from April 16th through November 1st, from 7:30 a.m. to 8:30 a.m. and from 4 p.m. to 5:30 p.m. Monday through Friday, except Federal holidays, the draws need not be opened.

(3) The following bridges are remotely operated, are required to operate a radiotelephone, and shall open as noted in this section; St. Paul Avenue, mile 1.21, Clybourn Street, mile 1.28, Wells Street, mile 1.61, Kilbourn Street, mile 1.70, State Street, mile 1.79, Highland Avenue, mile 1.97, and Knapp Street, mile 2.14.

(4) No vessel documented 12 tons or greater shall be held between any bridge at any time and must be passed as soon as possible.

(5) From November 2nd through April 15th, all drawbridges over the Milwaukee River will open on signal if a 12-hour advance notice is provided.

(b) The draws of bridges across the Menomonee River and South Menomonee Canal operate as follows:

(1) The draw of the North Plankinton Avenue bridge across the Menomonee River, mile 1.08, and the Canadian National Railroad bridge, mile 1.05, shall open on signal; except that, from April 16th through November 1st, from 7:30 a.m. to 8:30 a.m. and from 4 p.m. to 5:30 p.m.

Monday through Friday, except Federal holidays, the draws need not be opened, and from midnight to 7 a.m. Monday through Friday except Federal holidays the bridges will open on signal if a 2-hour advance notice is provided.

(2) The draws of all other bridges across the Menomonee River and South Menomonee Canal shall open on signal if at least 2-hours' notice is given except that, from April 16th through November 1st, from 7:30 a.m. to 8:30 a.m. and from 4 p.m. to 5:30 p.m. Monday through Friday, except Federal holidays, the draws need not be opened.

(3) The following bridges are remotely operated, are required to operate a radiotelephone, and shall open as noted in this section; North Plankinton Avenue, mile 1.08, North Sixth Street, mile 1.37, and North Ember Lane, mile 1.95, all over the Menomonee River and South Sixth Street, mile 1.51, over the South Menomonee Canal.

(4) No vessel documented over 12 tons shall be held between any bridge at any time and must be passed as soon as possible.

(5) From November 2nd through April 15th, all drawbridges over the Menomonee River and South Menomonee Canal will open on signal if a 12-hour advance notice is provided.

(c) The draws of bridges across the Kinnickinnic River operate as follows:

(1) The draw of the Kinnickinnic Avenue bridge, mile 1.5, shall open on signal; except that, from April 16th through November 1st, from 7:30 a.m. to 8:30 a.m. and from 4 p.m. to 5:30 p.m. Monday through Friday, except Federal holidays, the draws need not be opened, and from midnight to 7 a.m. Monday through Friday, except Federal holidays, the bridges will open on signal if a 2-hour advance notice is provided.

(2) The draws of all other bridges across the Kinnickinnic River shall open on signal if at least 2-hours' notice is given except that, from April 16th through November 1st, from 7:30 a.m. to 8:30 a.m. and from 4 p.m. to 5:30 p.m. Monday through Friday, except Federal holidays, the draws need not be opened.

(3) The following bridges are remotely operated, are required to operate a radiotelephone, and shall open as noted in this section; The South First Street Bridge, mile 1.78.

(4) No vessel documented over 12 tons shall be held between any bridge at any time and must be passed as soon as possible.

(5) From November 2nd through April 15th, all drawbridges over the Kinnickinnic River will open on signal if a 12-hour advance notice is provided.

(d) The Canadian Pacific Railroad Bridge at Mile 1.74 over the Burnham Canal, and the Sixteenth Street Bridge, mile 2.14, over the Menomonee River are closed by regulation and do not need to open for the passage of vessels.

Dated: April 2, 2021.

D. L. COTTRELL

Rear Admiral, U.S. Coast Guard,

Commander, Ninth Coast Guard District